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IMMIGRATION CONTROL AND LEGALIZATION AMENDMENTS ACT OF 1986

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Mr. DINGELL, from the Committee on Energy and Commerce, submitted the following

REPORT

[To accompany H.R. 3810]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce to whom was referred the bill (H.R. 3810) to amend the immigration and Nationality Act to revise and reform the immigration laws, and for other purposes, having considered the same, report those provisions of the bill within the jurisdiction of the Committee with amendments and recommend that the provisions as amended be agreed to.

The amendments (stated in terms of page and line numbers of the bill as reported by the Committee on the Judiciary) are as follows:

AMENDMENT NO. 1

Page 61, after line 14, insert the following new subsection:

(d) GAO REPORTS.—

(1) REPORT ON CURRENT PILOT PROJECTS.—The Comptroller General shall—

(A) examine current pilot projects relating to the System for Alien Verification of Eligibility (SAVE) operated by, or through cooperative agreements with, the Immigration and Naturalization Service, and

(B) report, not later than October 1, 1987, to Congress and to the Commissioner of the Immigration and Naturalization Service concerning the effectiveness of such projects and any problems with the implementation of such projects, particu-

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larly as they may apply to implementation of the system referred to in subsection (c)(1).

(2) REPORT ON IMPLEMENTATION OF VERIFICATION SYSTEM—The Comptroller General shall—

(A) monitor and analyze the implementation of such system,

(B) report to Congress and to the appropriate Secretaries described in subsection (c)(4)(D)(ii), by not later than April 1, 1989, on such implementation, and

(C) include in such report such recommendations for changes in the system as may be appropriate.

Page 61, line 7, strike "The amendments" and insert "Except as provided in paragraph (4), the amendments".

Page 61, after line 10, insert the following new paragraph (and redesignate the succeeding paragraph accordingly):

(4) USE OF VERIFICATION SYSTEM NOT REQUIRED FOR A PROGRAM IN CERTAIN CASES.—

(A) REPORT TO RESPECTIVE CONGRESSIONAL COMMITTEES.—With respect to each covered program (as defined in subparagraph (D)(i)), each appropriate Secretary shall examine and report to the appropriate Committee of the House of Representatives and of the Senate, by not later than April 1, 1988, concerning whether (and the extent to which)—

(i) the application of the amendments made by subsection (a) to the program is cost-effective and otherwise appropriate, and

(ii) there should be a waiver of the application of such amendments under subparagraph (B).

The amendments made by subsection (a) shall not apply with respect to a covered program until 6 months after the date of receipt of such report with respect to the program.

(B) WAIVER IN CERTAIN CASES.—If, with respect to a covered program, the appropriate Secretary determines, on the Secretary's own initiative or upon an application by an administration entity and based on such information as the Secretary deems persuasive (which may include the results of the report required under subsection (d)(1) and information contained in such an application), that—

(i) the appropriate Secretary or the administering entity has in effect an alternative system of immigration status verification which—

(I) is as effective and timely as the system otherwise required under the

amendments made by subsection (a) with respect to the program, and

(II) provides for at least the hearing and appeals rights for beneficiaries that would be provided under the amendments made by subsection (a), or

(ii) the costs of administration of the system otherwise required under such amendments exceed the estimated savings,

such Secretary may waive the application of such amendments to the covered program to the extent (by State or other geographic area or otherwise) that such determinations apply.

(C) BASIC FOR DETERMINATION.—A determination under subparagraph (B)(ii) shall be based upon the appropriate Secretary's estimate of—

(i) the number of aliens claiming benefits under the covered program in relation to the total number of claimants seeking benefits under the program,

(ii) any savings in benefit expenditures reasonably expected to result from implementation of the verification program, and

(iii) the labor and nonlabor costs of administration of the verification system,

the degrees to which the Immigration and Naturalization Service is capable of providing timely and accurate information to the administering entity in order to permit a reliable determination of immigration status, and such other factors as such Secretary deems relevant.

(D) DEFINITIONS.—In this paragraph:

(i) The term "covered program" means each of the following programs:

(I) The aid to families with dependent children program under part A of title IV of the Social Security Act.

(II) The medicaid program under title XIX of the Social Security Act.

(III) The supplemental security income program under title XVI of the Social Security Act.

(IV) Any State program under a plan approved under title I, X, XIV, or XVI of the Social Security Act.

(V) The unemployment compensation program under section 3304 of the Internal Revenue Code of 1954.

(IV) The food stamp program under the Food Stamp Act of 1977.

(VII) The programs of financial assistance for housing subject to section 214 of the Housing and Community Development Act of 1980.

(VIII) The program of grants, loans, and work assistance under title IV of the Higher Education Act of 1965.

(ii) The term "appropriate Secretary" means, with respect to the covered program described in—

(I) subclauses (I) through (IV) of clause (i), the Secretary of Health and Human Services;

(II) clause (i)(V), the Secretary of Labor;

(III) clause (i)(VI), the Secretary of Agriculture;

(IV) clause (i)(VII), the Secretary of Housing and Urban Development; and

(V) clause (i)(VIII), the Secretary of Education.

(iii) The term "administering entity" means, with respect to the covered program described in—

(I) subclause (I), (II), (IV), (V), or (VI) of clause (i), the State agency responsible for the administration of the program in a State;

(II) clause (i)(III), the Secretary of Health and Human Services;

(III) clause (i)(VII), the Secretary of Housing and Urban Development, a public housing agency, or another entity that determines the eligibility of an individual for financial assistance; and

(IV) clause (i)(VIII), an institution of higher education involved.

AMENDMENT NO. 2

Page 74, line 6, strike out "to meet" and all that follows through line 9 and insert in lieu thereof the following: "to undergo such a medical examination (including a determination of immunization status) as is appropriate and conforms to generally accepted professional standards of medical practice.".

AMENDMENT NO. 3

Page 77, line 22, strike out "paragraph (2)" and insert in lieu thereof "paragraphs (2) and (3)".

Page 78, line 14, insert "and paragraphs (2) and (3)" after "(A)".

Page 78, line 19, strike out "EXCEPTIONS" and insert in lieu thereof "EXCEPTIONS FOR CERTAIN INDIVIDUALS".

Page 78, line 24, insert "or" after the comma.

Page 79, line 4, insert ", or" and insert in lieu thereof a period.

Page 79, strike out lines 5 through 11 and insert in lieu thereof the following:

"(3) RESTRICTED MEDICAID BENEFITS.—

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"(A) CLARIFICATION OF ENTITLEMENT.—Subject to the restrictions under subparagraph (B), for the purpose of providing aliens with eligibility to receive medical assistance—

"(i) paragraph (1) shall not apply,

"(ii) aliens who would be eligible for medical assistance but for the provisions of paragraph (1) shall be deemed, for purposes of title XIX of the Social Security Act, to be so eligible, and

"(iii) aliens lawfully admitted for temporary residence under this section, such status not having changed, shall be considered to be permanently residing in the United States under color of law.

"(B) RESTRICTION OF BENEFITS.—

"(i) LIMITATION TO EMERGENCY SERVICES AND SERVICES FOR PREGNANT WOMEN.—Notwithstanding any provision of title XIX of the Social Security Act (including subparagraphs (B) and (C) of section 1902(a)(10) of such Act), aliens who, but for subparagraph (A), would be ineligible for medical assistance under paragraph (1), are only eligible for such assistance with respect to—

"(I) emergency services (as defined for purposes of section 1916(a)(2)(D) of the Social Security Act), and

"(II) services described in section 1916(a)(2)(B) of such Act (relating to service for pregnant women).

"(ii) NO RESTRICTION, FOR EXEMPT ALIENS AND CHILDREN.—The restrictions of clause (i) shall not apply to aliens who are described in paragraph (2) or who are under 18 years of age.

"(C) DEFINITION OF MEDICAL ASSISTANCE.—In this paragraph, the term 'medical assistance' refers to medical assistance under a State plan approved under title XIX of the Social Security Act.

Page 79, line 12, strike out "(3)" and insert in lieu thereof "(4)".
Page 80, line 2, strike out "(4)" and insert in lieu thereof "(5)".
Page 80, strike out lines 8 though 16.

AMENDMENT NO. 4

Page 85, line 18, strike out "(2)(C))." and insert in lieu thereof "(2)(D)) and for 100 percent of the costs of programs of public health assistance (as defined in paragraph (2)(C)) provided to any alien who is, or is applying on a timely basis to the Attorney General to become, an eligible legalized alien. No such reimbursement shall be available to any such program of public health assistance to the extent that the costs of services provided to such eligible legalized aliens have been financed through Federal funds.".

Page 86, beginning on line 3, strike out "or required in the interest of public health".

Page 86, after line 8, insert the following new subparagraph:

> (C) The term "program of public health assistance" means programs in a State or local jurisdiction which—
>
> (i) provide public health services, including immunizations for immunizable diseases, testing and treatment for tuberculosis and sexually-transmitted diseases, and family planning services,
>
> (ii) are generally available to needy individuals residing in the State or locality, and
>
> (iii) receive funding from units of State or local government.

Page 86, line 9, strike out "(C)" and insert in lieu thereof "(D)".

Page 86, line 21, strike out "(b)(2)(C)" and insert in lieu thereof "(b)(2)(D)".

Purpose and Summary

As reported by the Judiciary Committee on July 16, 1986, H.R. 3810 has three major purposes: (1) the control of illegal immigration through employer sanctions and verification of alien status under public assistance programs; (2) the legalization of undocumented aliens residing in the U.S.; and (3) the reform of existing law regarding legal immigration, including the status of special agricultural workers.

The amendments recommended by the Committee on Energy and Commerce apply only to those provisions of Titles I and II of the bill which relate to Medicaid and to Public Health Service Act programs. The Committee makes no recommendations on the bill as a whole or on any portions of the bill not within its jurisdiction.

Background and Need for the Legislation

An extensive description of the background and history of the legislation appears in House Report 99–682, part 1, and the Committee sees no need to recapitulate. However, the Committee does wish to set forth the major public health and medical care issues relating to aliens who are not lawfully in the country.

The public health and medical needs of undocumented aliens have long been of concern to the Committee. Many of those who have entered this country illegally come from countries in which public health services such as immunization are not routinely available and in which infectious illnesses may be endemic. The poor generally suffer from higher rates of infectious disease than the nonpoor, and poor aliens are no different in this respect. To the extent that they have not been properly immunized, poor aliens, and particularly poor alien children, are vulnerable to the spread of contagious disease. It is a basic public health principle that, as the number of individuals infected with a communicable disease increases, the number of potentially infectious contacts with the larger community increases.

The Committee observes that there are contagious diseases, such as tuberculosis and venereal diseases, against which it is not possible to immunize. The Committee is informed that these diseases may be more prevalent among poor alien populations than among poor Americans. For these diseases, especially those such as tuberculosis that may be asymptomatic, access to primary care (i.e., basic diagnostic and treatment services provided by physicians and other health professionals on an outpatient basis) is essential if the risk of contagion for the larger community is to be effectively contained. With proper primary care, these diseases can be treated during their early stages, and the risk of contagion eliminated. Thus, two elements are essential to any strategy to control contagious disease: the knowledge of, and access to, immunizations, and access to primary care screenings and treatment.

Although poor undocumented aliens may be particularly vulnerable to communicable diseases, they may not, as a practical matter, have access to needed public health or medical services. Living illegally in this country with the fear of being detained or deported, many undocumented aliens are unwilling to consult public clinics, and are unable, due to their inability to pay, to consult private physicians. They tend to work at low-paying agricultural or service sector jobs which rarely offer group health insurance coverage. Since many of them are not considered to be residing in the U.S. "under color of law," they are often ineligible for Medicaid and other publicly-financed health programs, even though many of them contribute to Federal, State, and local tax revenues. The fear of being apprehended, combined with the lack of health coverage and the inability to pay, combine effectively to deny poor undocumented aliens access to needed immunization services and primary care. Not only does this circumstance jeopardize the health status of these individuals and their children, it undermines public health efforts to control contagious diseases.

It is evident to the Committee that the control of contagious disease is of importance not just to the undocumented alien population, but to the community at large. Infections do not recognize borders and do not discriminate on the basis of national origin. In the view of the Committee, there is a strong national public health interest in improving the accessibility of needed immunization and primary care services to this population, and particularly to those on whom the Congress chooses to confer legalized immigration status.

The Committee amendments relate to four discrete issues: verification of immigration status of applicants for Medicaid; medical exams for those seeking legalization; eligibility of otherwise qualified legalized aliens for Medicaid; and reimbursement for the costs of State and local public health services.

VERIFICATION OF IMMIGRATION STATUS OF ALIENS APPLYING FOR MEDICAID

As reported by the Judiciary Committee, the bill would require all States, effective October 1, 1988, to operate an immigration status verification system approved by the Secretary of Health and Human Services. Under this system, States would have to verify

whether every applicant for Medicaid or any other public assistance program is either a citizen or in a "satisfactory" immigration status—i.e., one that does not make the individual ineligible for program benefits. The other public assistance programs to which the same requirement would apply include Aid to Families with Dependent Children (AFDC) and Supplemental Security Income (SSI), as well as unemployment compensation, food stamps, housing assistance, and higher educational assistance programs.

Under the Judiciary Committee's proposal, every individual applying for Medicaid would, as a condition of eligibility, have to file a written declaration, under penalty of perjury, regarding his or her citizen or alien status. An alien would have to present to the State agency an alien registration document or other reasonable evidence of satisfactory immigration status. The State would then have to verify this information with the immigration and naturalization Service (INS), using an automated data system that the INS is required to have operational by October 1, 1987. Pending verification, States would be prohibited from delaying, denying, or terminating benefits to any otherwise qualified individual on the basis of immigration status. Persons whom the State determines do not have a "satisfactory" immigration status would be terminated from Medicaid. States would be entitled to reimbursement for 100 percent of the costs of implementation and operation of their verification systems and would not be liable for Medicaid funds improperly spent due to the failure or delay on the part of the INS to conduct a requested verification.

According to the Judiciary Committee, this provision "had its genesis" in the Systematic Alien Verification for Entitlements project, commonly referred to as "SAVE." Over the past two years, the INS has implemented SAVE pilot projects in a number of States, including Florida, Illinois, and Colorado. According to the National Governors' Association, however, the experience with SAVE to date indicates that the INS data are "incomplete and often inaccurate," and that the capacity of verification to generate savings for the Federal and State government is "questionable." The Governors cite the example of the SAVE pilot project in Colorado, which verifies eligibility for both unemployment compensation and income security programs, including AFDC. Of a total of 147,000 alien applicants in FY 1985, only 17 were found ineligible; savings were only $3,046, compared with administrative costs, exclusive of staff time, of $10,500. The Governors also point out that, although this verification mandate would apply in all States, the undocumented alien population is concentrated in only a few. According to a Census Department estimate of the distribution of this population in 1980, over 80 percent were residing in 5 States: California (an estimated 50%); New York (11%); Texas (9%); Illinois (7%), and Florida (4%). The Committee is concerned that, even if mandatory verification in the States with relatively high percentages of undocumented aliens can be shown to be cost-effective, the imposition of this requirement in other States may well waste scarce Federal resources.

The Committee notes that the Administration has urged that the Secretary of HHS be given the authority to waive this verification requirement where implementation would not be cost-effective or

where the State has an alternative approach. The Committee further notes that just over half of all Medicaid eligibles are receiving cash assistance under the AFDC or SSI programs; even if it proves cost-effective to verify eligibility under the AFDC and SSI programs, it would be a useless exercise to subject every cash assistance recipient to yet another verification for purposes of Medicaid eligibility. Given the uneven experience in the SAVE pilot projects to date, given the concerns of both the Governors and the Administration regarding mandatory implementation of such a system in every State for every applicant for every public assistance program, and given the linkage of Medicaid and cash assistance eligibility, the Committee has determined that further study of this issue is required, and that the Secretary of HHS should be given the discretion to waive this requirement wherever appropriate.

Accordingly, the Committee amendment requires the Secretary of HHS to waive the requirement that a State implement a verification system with respect to Medicaid (and other covered public assistance programs) in either of two circumstances: (1) the costs of administration of an alternative system of immigration status verification are likely to exceed the estimated savings; or (2) the State has in effect an alternative system of immigration status verification which is as effective and timely as the mandated system and provides for at least the same protections for beneficiaries, including hearings and appeals rights. The Secretary may waive the verification requirement on either ground with respect to the Medicaid program in any State, or in any portion of any State. Thus, if the Secretary determines that the implementation of such a system for Medicaid eligibility would be cost-effective in one community due to the high concentration of undocumented aliens, he may waive the implementation of the system in the Medicaid program for the rest of the State.

In determining whether the verification requirement should be waived due to lack of cost-effectiveness, the Secretary must estimate (1) the number of aliens claiming Medicaid benefits in relation to the total number of applicants; (2) any savings in Medicaid benefits expenditures reasonably expected to result from a verification program; and (3) the labor and non-labor costs of administering the system in the context of the Medicaid program. The Secretary must also consider the degree to which the INS is capable of providing timely and accurate information to each of the State Medicaid agencies in order to permit a reliable determination of immigration status. It is of particular concern to the Committee that any verification system implemented in any State with respect to its Medicaid program avoid any erroneous denials of coverage to otherwise qualified aliens, including those who fall into any of the judicially or administratively-recognized categories of aliens who are permanently residing in the U.S. under color of law. Finally, the Secretary must also consider other factors relevant to the Medicaid program in determining whether verification would be cost effective. These would include not only the prospect of duplicate verification due to the linkage between Medicaid and AFDC and SSI eligibility, but also the limited possibility that the Medicaid eligibles, including many nursing home residents, who are not receiving cash assistance are likely to be undocumented aliens. The Commit-

tee stresses that the Secretary's determination as to cost-effectiveness for the Medicaid program should be specific to that program, and should not be extrapolated from judgments about the AFDC, SSI or other public assistance programs.

The Committee bill requires that the Secretary of HHS report to this Committee and to the Senate Committee on Finance as to whether the implementation of a mandatory verification system with respect to Medicaid eligibility is cost-effective and otherwise appropriate, and whether (and to what extent) the implementation of this system should be waived in any State or part of a State. The Committee expects that, as part of this report, the Secretary will make—and explain—a separate determination of cost-effectiveness and appropriateness with respect to each State's Medicaid program. The Secretary's report is due no later than April 1, 1988; the scheduled implementation date for the mandatory verification system is October 1, 1988. The Committee believes that the Congress needs 6 months to review the Secretary's report and, if necessary, to develop remedial legislation. The Committee bill therefore provides that implementation of the mandatory system with respect to the Medicaid program cannot occur until 6 months after the submission of the Secretary's report concerning Medicaid.

The Committee bill further provides that the GAO report to the Congress by October 1, 1987, on the SAVE pilot projects and by April 1, 1989, on the implementation of the mandatory verification system. The Committee expects that the Secretary will consider the GAO findings specific to Medicaid in making his determinations with respect to cost-effectiveness, appropriateness, and waivers of the verification system requirements in the case of Medicaid.

MEDICAL EXAMINATIONS

In order to qualify for temporary or permanent legal resident status under the legalization program established by section 201 of the bill, an alien must undergo a medical examination at his or her own expense. The purpose of the examination is to detect physical or medical conditions that may be the basis for exclusion under the Immigration and Nationality Act, including mental retardation, mental illness, chronic alcoholism, drug addiction, and dangerous contagious diseases.

This medical exam offers an ideal opportunity, at no cost to the Federal government, to achieve some basic public health objectives, including control of contagious disease. The Committee is informed that low-income alien populations are less likely to have been properly immunized in their country of origan than comparable U.S. populations, and that they may suffer from higher rates of diseases or conditions which require early detection and treatment to avoid the risk of contagion to the large community. This medical exam can function to identify excludable medical conditions; to determine the individual's immunization status; to educate the patient on the need for immunizations; and, where medically indicated, to refer the patient for treatment services.

The Committee amendment therefore requires that this medical examination include an assessment of the immunization status for all applicants for legalization. This assessment is not intended to

serve as a barrier to legalization: the Committee amendment does not require an alien to be immunized. Although lack of immunization should not be construed as an excludable condition, the Committee amendment does not alter the current statutory requirement that the presence of a dangerous contagious disease is a ground for exclusion. The Committee's intent is to promote appropriate voluntary immunization. Potential applicants, and particularly children, should be encouraged by the examining physician to update their immunization status where deficiencies are noted or a documented history of immunization or disease is unavailable. Information on the availability of publicly provided or publicly assisted immunization programs should be provided to the alien. The immunizations to which the Committee refers are those that are commonly administered during early childhood and generally required for attendance in schools.

The Committee amendment also specifies that the medical examination performed be appropriate and conform to generally accepted professional standards of medical practice. In so specifying, the Committee does not intend to require two examinations, one to identify excludable medical conditions, and one to assess health status. The Committee recognizes that the primary purpose of this medical examination is to determine whether there is any basis for exclusion of the individual on medical grounds. Indeed, the Committee does not intend to require a comprehensive physical examination for all diseases and disorders. Rather, the Committee intends that, in carrying out this limited examination, physicians conform to accepted standards of medical practice. Testimony presented to the Committee suggests that potentially inappropriate screening procedures are in common use, even though other techniques which present less risk to the patient are available (e.g., x-rays rather than skin tests for tuberculosis). The Committee expects the Public Health Service and examining physicians to review their screening techniques, practices, and diagnoses to ensure that they are neither unnecessarily costly nor reflective of outdated medical practice or theory.

It is the understanding of the Committee that it is customary for the INS to designate a list of the physicians in each community who may perform these medical examinations, and that the alien is allowed to choose from among those listed. Under the bill's legalization provisions, the demand for medical examinations can be expected to increase substantially in some communities. The Committee intends that the INS, in revising its designations to accommodate this demand, will include qualified public clinics and hospitals among the approved providers. The Committee expects that inclusion of these facilities will increase the accessibility of these examinations to aliens applying for legalization, and will promote the voluntary immunization of these applicants through referrals to public immunization clinics.

DENIAL OF MEDICAID ELIGIBILTY TO LEGALIZED ALIENS

Current Health Care Financing Administration regulations limit Medicaid coverage to aliens who are otherwise eligible for benefits (i.e., who meet the applicable income, resource, and categorical

tests) and who are lawfully admitted for permanent residence or permanently residing in the U.S. under color of law. A U.S. District Court has recently held these regulation invalid, *Lewis* v. *Gross*, No. CV-79-1740 (E.D.N.Y., July 14, 1986). The Aid to Families with Dependent Children (AFDC) program, and the Supplemental Security Income (SSI) program, both statutorily limit eligibility for cash assistance benefits to otherwise qualified aliens who are lawfully admitted for permanent residence of otherwise permanently residing in the U.S. under color of law.

As reported by the Committee on the Judiciary, the bill would create a new category of aliens residing in the U.S. "under color of law:" those whose immigration status is adjusted to that of an alien lawfully admitted for temporary and, subsequently, permanent residence under the legalization provisions of section 201. Under current law, these legalized aliens, if otherwise qualified, would be eligible for Medicaid benefits. However, the bill provides that, for 5 years after the date on which an otherwise eligible alien is granted lawful temporary resident status under the legalization program, he or she is ineligible for Medicaid benefits. Five groups of otherwise eligible aliens are protected from this 5-year disqualification: (1) Cuban and Haitian entrants; (2) aged, blind, and disabled individuals (as defined for SSI purposes); (3) children under 18; (4) pregnant women (for pregnancy-related services only); and (5) aliens needing emergency services. The bill supersedes any Medicaid State plan requirements to the extent required to restrict Medicaid benefits to the unprotected legalized aliens and expressly permits States or localities to restrict such coverage to the same extent.

The Committee amendment revises the bill so as to clarify that the legalized aliens who are entitled to Medicaid coverage under the terms of the 5 exceptions listed above must be otherwise eligible. This means that the alien must meet the income, resource, and categorical requirements of the State in which he or she is applying. The Committee amendment also replaces the provision relating to supersession of State Medicaid plan requirements with language clarifying that those legalized aliens eligible for emergency services or pregnancy-related services are not also entitled to other covered services as a result of the comparability requirements of sections 1902(a)(10)(B) and (C) of the Social Security Act. (However, those otherwise eligible aliens who are aged, blind, disabled, children under 18, or Cuban-Haitian entrants would be entitled to all covered services). In addition, the Committee amendment further clarifies that, while an otherwise qualified alien legalized under this bill is in a temporary resident status, he or she, for purposes of Medicaid eligibility, is considered "permanently residing in the U.S. under color of law."

The Committee recognizes that while the 5-year disqualification period in the bill applies to AFDC benefits as well as Medicaid, there are no exceptions for AFDC coverage comparable to those provided for Medicaid. (Under the bill, otherwise eligible aged, blind, and disabled aliens would receive SSI cash assistance as well as Medicaid benefits). In taking up the bill, the Committee specifically considered and rejected an amendment that would have eliminated the bill's proposed exceptions for alien children under

18 and for pregnancy-related services. The Committee believes that basic public health considerations, including the well-established importance of early and adequate prenatal care for the health of mothers and babies, militates against the denial of payment for basic medical care on behalf of the low-income legalized alien population. The Committee wishes to stress that, whether or not an alien legalized under this bill is actually receiving cash assistance under the AFDC program, if he or she is otherwise eligible for Medicaid benefits and falls within one of the 5 categories protected from the 5-year disqualification, he or she is entitled to Medicaid coverage.

Some would argue that there should be no exceptions to the 5-year disqualification from Medicaid benefits on the grounds that these exceptions are too costly for the Federal and State governments. The Committee would first observe that, unlike cash assistance benefits, needed emergency care cannot legally be withheld in many States. The Congress recently enacted a requirement that all hospitals participating in Medicare which operate an emergency room examine and, where necessary, stabilize any individual requesting services, regardless of ability to pay. Women in active labor are specifically included among the individuals entitled to the protections of the Medicare screening and stabilization requirements. Thus, the Congress has attempted, through the Medicare program, to assue that no individual, regardless of ability to pay or immigration status, may be denied emergency medical care. Denial of eligibility for Medicaid will not—and should not—result in a denial of needed medical services. Instead, it will merely shift the cost of those medical services from the Federal and State govenments to the provider, which in many cases is the local public hospital or clinic.

Evidence of the magnitude of this cost shift comes from a 1983 study of undocumented aliens treated by the New York City Health and Hospitals Corporation, which operates the nation's largest public hospital system, comprises of 11 acute care hospitals, 4 long-term care facilities, 6 community-based neighborhood centers and over 30 satellite clinics. The study found that HHC hospitals treat roughly 7000 undocumented aliens as short-stay (under 90 days) patients each year, over 80 percent of whom are admitted through the emergency rooms. Half of these patients (51%) are pregnant women, most of whom have not received adequate prenatal care and have come to the hospital to give birth or resolve a complication of pregnancy. The study estimated that the HHC hospitals lose about $18 million each year in Medicaid revenues solely because of the immigration status of its short-stay alien patients. Obviously, these are funds that must be made up by local taxpayers.

In the Committee's view, it would be wholly inappropriate for the Federal government, which has exclusive control over our Nation's borders and its immigration policy, to leave the financial consequences of that policy solely to the States and localities. If the Congress elects to legalize certain undocumented aliens, it is incumbent upon it to acknowledge the Federal government's responsibility to help pay for the emergency services that hospitals must, as a matter of State law and Federal Medicare law, provide to

these individuals who are unable to pay. Medicaid, the Federal-State program that purchases basic health care for the poor, is one logical vehicle for fulfilling this responsibility. In the case of low-income alien children and pregnant women, it would be simply irrational, from a public health standpoint, to discourage access to needed primary care and pregnancy-related services by denying Medicaid coverage. In the case of the aged, blind, and disabled who are otherwise eligible for Medicaid, it would be unconscionable to deny them coverage for needed services.

STATE LEGALIZATION ASSISTANCE

As reported by the Committee on the Judiciary, section 204 of the bill directs the Secretary of HHS to reimburse each State, subject to amounts appropriated in advance, for 100 percent of the costs of "programs of public assistance" provided to any eligible alien who has been granted temporary permanent resident status under the bill's legalization provisions. The bill authorizes the appropriation of such sums as may be necessary over the period FY 1987 through FY 1991 for this purpose. "Programs of public assistance" are defined to include any existing State- or locally-funded programs which provide for cash, medical, or other assistance required in the interest of public health and which are generally available to the needy.

It is clear that the State (and, where applicable, local) share of Medicaid expenditures for eligible legalized aliens is fully reimbursable as a "program of public assistance." However, the status of traditional public health programs under the bill is less certain. Accordingly, the Committee amendment clarifies that the State and local costs of providing services through "programs of public health assistance" to aliens who have been legalized (or have applied on a timely basis) qualify for 100 percent reimbursement to the same extent as "progams of public assistance." The Committee amendment makes explicit that reimbursable "programs of public health assistance" include immunizations for immunizable diseases, testing and treatment for tuberculosis and sexually-transmitted diseases, and family planning services.

The Committee amendment would provide 100 percent Federal reimbursement for the State and local costs of providing public health services to aliens who have filed loan bona fide applications for legalization and are awaiting a determination, as well as those who have been granted temporary permanent resident status. The Committee recognizes that it is neither in the alien's nor the Nation's interest for localities to withhold such services, which are designed for the protection of the broader community, due to lack of funds until the INS has formally approved an adjustment of immigration status. The Committee does not expect that many undocumented aliens will file frivolous applications for legalization just to obtain public health services, but in those cases where this occurs, the Committee does not intend that Federal reimbursement be made.

Finally, the Committee amendment makes clear that, to the extent a State or local public health program has already received Federal funding to provide services specifically to these eligible le-

galized aliens, the costs of services provided to such individuals are not eligible for reimbursement under the bill's legalization assistance program. The Committee intends that Federal reimbursement for State legalization cost not duplicate Federal funds already expended under existing categorical and block grant programs for the eligible legalized population.

HEARINGS

The Committee's Subcommittee on Health and the Environment held one day of hearings on June 17, 1983, on the Immigration Reform and Control Act of 1983, H.R. 1510, the predecessor to H.R. 3810. Testimony was received from nine witnesses, with additional material submitted by three individuals and organizations.

Due to the extremely short period for which H.R. 3810 was referred and the press of other legislative matters, the Subcommittee did not have an opportunity to supplement this hearing record.

COMMITTEE CONSIDERATION

On July 29, 1986, the Committee met in open session and ordered reported the bill H.R. 3810, with amendment, by voice vote, a quorum being present.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 2(l)(3)(A) of Rule XI of the Rules of the House of Representatives, the oversight findings and recommendations made by the Committee are reflected in the legislative report.

COMMITTEE ON GOVERNMENT OPERATIONS

Pursuant to clause 2 (l)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Operations.

COMMITTEE COST ESTIMATE

In compliance with clause 7(a) of rule XIII of the Rules of the House of Representatives, the Committee believes the amendments it has recommended will have no budget effect on the cost incurred in carrying out H.R. 3810 as reported by the Committee on the Judiciary.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 31, 1986.

Hon. JOHN D. DINGELL,
Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared this cost estimate for amendments to H.R. 3810, the Immigration Control and Legalization Amendments Act of 1986, as ordered reported by the House Committee on Energy and Commerce

on July 29, 1986. H.R. 3810 was ordered reported by the House Committee on the Judiciary on June 25, 1986.

This estimate provides the spending impacts of the Committee on Energy and Commerce amendments to H.R. 3810. The original CBO estimate for H.R. 3810, as reported by the Committee on the Judiciary, is attached to provide background information. The table below shows the original estimate of H.R. 3810's impact on spending, the Committee on Energy and Commerce changes to spending, and the resulting estimated spending, revenue, and federal deficit totals for the bill as amended.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

[By fiscal year, in millions of dollars]

	1986	1987	1988	1989	1990	1991
Judiciary bill:						
Required budget authority/estimated authorization level	434	655	1,170	1,885	2,201	2,277
Estimated outlays		480	819	1,779	2,348	2,475
Energy and Commerce amendments:						
Required budget authority/estimated authorization level		(1)	(1)	(1)	(1)	(1)
Estimated outlays		(1)	(1)	(1)	(1)	(1)
Total spending:						
Required budget authority/estimated authorization level	434	655	1,170	1,885	2,201	2,277
Estimated outlays		480	819	1,779	2,348	2,475
Estimated revenues		70	166	54	54	
Net budget impact: Estimated net increase or decrease ((−)) in the deficit		410	653	1,725	2,294	2,475

[1] Less than $500,000.

The Committee on Energy and Commerce reported four amendments to H.R. 3810, none of which are estimated by CBO to affect spending significantly.

Amendments were made to the System for Alien Verification of Eligibility (SAVE), which would require a number of federal benefit programs to check with the Immigration and Naturalization Service as to the resident status of aliens applying for program benefits. These amendments would permit a program or jurisdiction not to use SAVE if waivers were granted by Department Secretaries. Waivers could be given if alternative verification systems were found to be as effective or if the administrative costs of SAVE exceeded any estimated savings. Without knowing more about SAVE and the extent to which waivers might be granted, the CBO estimate assumed that savings and costs would be approximately offsetting. If the cost effectiveness of SAVE could be measured accurately and waivers granted accordingly, however, these amendments would be likely to result in federal budgetary savings.

The remaining amendments primarily clarified the bill's language concerning denial of Medicaid eligibility to aliens legalized under H.R. 3810, state legalization assistance for programs of public health, and required medical exams for aliens applying for legalization.

If you wish further details on this estimate, please call me or have your staff contact Janice Peskin (226-2820).

With best wishes.

Sincerely,

RUDOLPH G. PENNER.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee makes the following statement with regard to the inflationary impact of the reported bill:

The Committee is unaware of any inflationary effects that might be associated with the amendments it has recommended. To the extent that these amendments will encourage early intervention in health problems, control communicable diseases, and assure adequate care for pregnant women and children, the Committee believes that the legislation may lower the long-term social and economic costs of preventable disability and disease.

AGENCY VIEWS

No agency views were received by the Committee on Energy and Commerce.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, except as shown below, are shown in part 1 of this report, filed by the Committee on the Judiciary on July 16, 1985. The differences between the bill as reported by the Committee and as reported by the Committee on the Judiciary are shown below using the following typographical devices (with "Judiciary" referring to the Committee on the Judiciary and "E&C" referring to the Committee on Energy and Commerce):

Existing law—

in which no change is proposed by Judiciary or E&C, printed in roman.

proposed to be omitted by both Judiciary and E&C, enclosed in black brackets, viz., [ ].

proposed to be omitted only by Judiciary (and not by E&C), printed in ~~linetype~~.

proposed to be omitted only by E&C (and not by Judiciary), enclosed in black parentheses, viz., ( ).

New matter—

proposed to be inserted by both Judiciary and E&C, printed in *italic*.

proposed to be inserted only by Judiciary (and not by E&C), printed in ~~*italic linetype*~~.

proposed to be inserted only by E&C (and not by Judiciary), printed in **boldface roman.**

IMMIGRATION AND NATIONALITY ACT

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TITLE II—IMMIGRATION

* * * * * * *

CHAPTER 5—DEPORTATION; ADJUSTMENT OF STATUS

* * * * * * *

ADJUSTMENT OF STATUS OF CERTAIN ENTRANTS BEFORE JANUARY 1, 1982, TO THAT OF PERSON ADMITTED FOR LAWFUL RESIDENCE

*SEC. 245A. (a) * * **

* * * * * * *

(d) WAIVER OF NUMERICAL LIMITATIONS AND CERTAIN GROUNDS FOR EXCLUSION.—

*(1) * * **

(2) WAIVER OF GROUNDS FOR EXCLUSION.—In the determination of an alien's admissibility under subsections (a)(4)(A), (b)(1)(C)(i), and (b)(2)(B)—

*(A) * * **

* * * * * * *

(C) MEDICAL EXAMINATION.—The alien shall be required, at the alien's expense, ~~to meet the same requirements with respect to a medical examination as are required of aliens seeking entry into the United States as immigrants.~~ **to undergo such a medical examination (including a determination of immunization status) as is appropriate and conforms to generally accepted professional standards of medical practice.**

* * * * * * *

(h) TEMPORARY DISQUALIFICATION OF NEWLY LEGALIZED ALIENS FROM RECEIVING CERTAIN PUBLIC WELFARE ASSISTANCE—

(1) IN GENERAL.—During the five-year period beginning on the date an alien was granted lawful temporary resident status under subsection (a), and notwithstanding any other provision of law—

(A) except as provided in ~~paragraph (2)~~ **paragraphs (2) and (3),** *the alien is not eligible for—*

(i) any program of financial assistance furnished under Federal law (whether through grant, loan, guarantee, or otherwise) on the basis of financial need, as such programs are identified by the Attorney General in consultation with other appropriate heads of the various departments and agencies of Government,

(ii) medical assistance under a State plan approved under title XIX of the Social Security Act, and

(iii) assistance under the Food Stamp Act of 1977; and

(B) a State or political subdivision therein may, to the extent consistent with subparagraph (A) **and paragraphs (2) and (3),** *provide that the alien is not eligible for the programs of financial assistance or for medical assistance described in subparagraph (A)(ii) furnished under the law of that State or political subdivision.*

(2) EXCEPTIONS FOR CERTAIN INDIVIDUALS.—Paragraph (1) shall not apply—

(A) to a Cuban and Haitian entrant (as defined in paragraph (1) or (2)(A) of section 501(e) of Public Law 96-422, as in effect on April 1, 1983), **or**

(B) in the case of assistance furnished to an alien who is an aged, blind, or disabled individual (as defined in section 1614(a)(1) of the Social Security Act, ~~*or*~~*.*

~~*(C) in the case of medical assistance (i) for care and services provided to an alien who is under 18 years of age, (ii) for emergency services (as defined for purposes of section 1916(a)(3)(D) of the Social Security Act) or (iii) for services described in section 1916(a)(3(B) of such Act (relating to services for pregnant women).*~~

(3) RESTRICTED MEDICAID BENEFITS.—

(A) CLARIFICATION OF ENTITLEMENT.—Subject to the restrictions under subparagraph (B), for the purpose of providing aliens with eligibility to receive medical assistance—

(i) paragraph (1) shall not apply,

(ii) aliens who would be eligible for medical assistance but for the provisions of paragraph (1) shall be deemed, for purposes of title XIX of the Social Security Act, to be so eligible, and

(iii) aliens lawfully admitted for temporary residence under this section, such status not having changed, shall be considered to be permanently residing in the United States under color of law.

(B) RESTRICTION OF BENEFITS.—

(i) LIMITATION TO EMERGENCY SERVICES AND SERVICES FOR PREGNANT WOMEN.—Notwithstanding any provision of title XIX of the Social Security Act (including subparagraphs (B) and (C) of section 1902(a)(10) of such Act), aliens who, but for subparagraph (A), would be ineligible for medical assistance under paragraph (1), are only eligible for such assistance with respect to—

(I) emergency services (as defined for purposes of section 1916(a)(2)(D) of the Social Security Act), and

(II) services described in section 1916(a)(2)(B) of such Act (relating to service for pregnant women).

(ii) NO RESTRICTION FOR EXEMPT ALIENS AND CHILDREN.—The restrictions of clause (i) shall not apply to aliens who are described in paragraph (2) or who are under 18 years of age.

(C) DEFINITION OF MEDICAL ASSISTANCE.—In this paragraph, the term "medical assistance" refers to medical assistance under a State plan approved under title XIX of the Social Security Act.

~~*(3)*~~ **(4)** *TREATMENT OF CERTAIN PROGRAMS.—Assistance furnished under any of the following provisions of law shall not be construed to be financial assistance described in paragraph (1)(A)(i):*

* * * * * * *

~~(4)~~ (5) *ADJUSTMENT NOT AFFECTING FASCELL-STONE BENEFITS.—For the purpose of section 501 of the Refugee Education Assistance Act of 1980 (Public Law 96-122), assistance shall be continued under such section with respect to an alien without regard to the alien's adjustment of status under this section.*

~~*(5) MODIFICATION OF MEDICAID REQUIREMENTS.—The eligibility, comparability, and any other State plan requirements of title XIX of the Social Security Act are superceded to the extent required to restrict the medical assistance in the manner described in this subsection. The Secretary of Health and Human Services, in coordination with the Attorney General, shall promulgate regulations in order to carry out this subsection.*~~

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